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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,091	01/18/2006	Leif Stern	HW-8007	5471
26294	7590	03/25/2008	EXAMINER	
TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P. 1300 EAST NINTH STREET, SUITE 1700 CLEVEVLAND, OH 44114			DUMAS, NKEISHA J	
		ART UNIT	PAPER NUMBER	
		3632		
		MAIL DATE	DELIVERY MODE	
		03/25/2008	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/565,091	STERN, LEIF	
	<b>Examiner</b>	<b>Art Unit</b>	
	NKEISHA J. DUMAS	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 January 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 3-11 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1 and 3-11 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 18 January 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/18/2006</u> .   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

1. The following correspondence is a non-final Office Action for application number 10/565,091 for a SCREEN FOR HOLDING REFUSE SACKS OPEN, filed on 1/18/2006. This correspondence is in response to applicant's request for continued examination filed on 1/28/2008. Claims 1 and 3-11 are pending.

### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 28, 2008 has been entered.

### ***Claim Rejections - 35 USC § 112***

3 The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1 and 3-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 1 recites the limitation "the length of the screen" in line 15. There is insufficient antecedent basis for this limitation in the claim. Claims 3-10 are rejected for the same reasons as dependent on claim 1.

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6. Claim 5 recites the limitation "wherein the pins (11a) extend outwards from a second end portion (1c) of the screen (1)." This limitation is unclear because it appears that the "end portion (1c)" referenced in claim 1 is the same structure as the "second end portion (1c)" of claim 5, thereby making no distinction between the end portion and the second end portion. Clarification is requested.

7. There is an inconsistency between the language in the preamble of claim 1 and certain portions in the body of claim 10, thereby making the scope of the claims unclear. The preamble in claim 1 clearly indicates that a subcombination is being claimed, e.g., "a screen for **holding refuse sacks**...." This language would lead the examiner to believe that the applicant intends to claim only the subcombination of a "screen," the refuse sacks being only functionally recited. This presents no problem as long as the body of the claims also refer to the functionality, such as, "for attachment to said refuse sacks."

The problem arises when the refuse sacks are positively recited within the body of the claims, such as, "wherein... the refuse sack is a plastic bag." There is an inconsistency within the claims; the preamble of claim 1 indicates subcombination, while in at least one instance in the body of claim 10 there is a positive recital of structure indicating that the combination of a screen and the refuse sacks are being claimed. The examiner cannot be sure if applicant's intent is to claim merely the screen or the screen in combination with the refuse sacks. Applicant is required to clarify what the claims are intended to be drawn to, i.e., either the screen alone or the combination of the screen and the refuse sacks. Applicant should make the language of the claims consistent with

applicant's intent. In formulating a rejection on the merits, the examiner is considering that the claims are drawn to the combination and the claims will be rejected accordingly. If applicant indicates by amendment that the combination claim is the intention, the language in the preamble of claim 1 should be made consistent with the language in the body of claim 10. If the intent is to claim the subcombination, then the body of claim 10 must be amended to remove positive recitation of the combination.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1 and 3-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sealy, Jr. (U.S. Pat. 5,803,299).

Regarding claims 1 and 11, as best understood, Sealy teaches a screen (15, Fig. 17) formed of an elastic material (col. 5, lines 24-28) and is compressible from a normal shape to a narrower shape, the screen thereafter being brought to spring out from the narrower shape to the normal shape, the screen has a length permitting folding of open parts of a refuse sack (13, Fig. 1) into the screen, and a locking device including pins (9), the pins being uniformly distributed along an interior portion of the screen and extending from an interior portion in a direction substantially along a length of the screen (Fig. 17), but does not teach that the portion from which the pins extend is an end portion. It would have been obvious to one of ordinary skill in the art, at the time

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the invention was made, to construct the screen of Sealy where the portion from which the pins extend is an end portion since the rearranging of parts of an invention involves only routine skill in the art.

Regarding claim 3, Sealy teaches the screen of claim 1, where a member (17) is provided to hold the screen in the narrower shape.

Regarding claim 4, as best understood, Sealy teaches the screen of claim 1, wherein a second end portion of the screen has at least one handle opening (9b) into which parts of the refuse sack are insertable.

Regarding claim 5, as best understood, Sealy teaches the screen of claim 1, where the pins extend outwards.

Regarding claim 6, as best understood, Sealy teaches the screen of claim 1, wherein the screen in cross section has a semicircular or substantially semicircular shape (when left partially open).

Although claim 7 recites purely functional limitations, it is nonetheless rejected because, as best understood, Sealy teaches the screen of claim 1, wherein the screen is capable of permitting a refuse sack to be provided thereon, on a support from which refuse shall be moved into the refuse sack, such that those parts of the refuse sack which extend between two longitudinal edges of the screen and which thereby have a planar shape, can be situated close to and/or engage the support.

Although claim 8 recites functional limitations, it is nonetheless rejected because, as best understood, Sealy teaches the screen of claim 1, where the longitudinal edges

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are capable of being designed for preventing damage of the refuse sack by the longitudinal edges.

Although claim 9 recites purely functional limitations, it is nonetheless rejected because, as best understood, Sealy teaches the screen of claim 1, wherein a strip is capable of being hooked onto two longitudinal edges of the screen such that the strip extends across an opening between the edges at second end portions of the screen and open parts of the refuse sack can be folded within the strip.

Regarding claim 10, as best understood, Sealy teaches the screen of claim 1, where the screen is thin-walled (Fig. 17) and the refuse sack is a plastic bag (Fig. 1), but does not teach that the screen consists of polypropylene. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to construct the invention of Sealy where the screen consists of polypropylene since it is within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NKEISHA J. DUMAS whose telephone number is (571)272-5781. The examiner can normally be reached on Monday - Friday, 7:30 a.m. - 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571) 272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

njd

/Anita M. King/  
Primary Examiner, Art Unit 3632

February 20, 2008